

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MARK JORGENSEN,  Plaintiff,  vs.  CITY OF URBANDALE,  Defendant.	Case No. _____   <b>PETITION and JURY DEMAND</b>
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COMES NOW the Plaintiff, Mark Jorgensen, and for his cause of action states the following:

**INTRODUCTION**

1. This is an action under the Iowa Civil Rights Act, challenging Defendant's disability discrimination, harassment, failure to accommodate, and retaliation against the Plaintiff.
2. Plaintiff Mark Jorgensen is a resident of Polk County, Iowa.
3. Defendant City of Urbandale is a municipal corporation within the State of Iowa.
4. The acts of which Plaintiff complains occurred in Polk County.

**PROCEDURAL REQUIREMENTS**

5. On January 10, 2018, within 300 days of the acts of which he complains, Plaintiff filed charges of employment discrimination against Defendant with the Iowa Civil Rights Commission.

6. On October 31, 2018, less than 90 days prior to the filing of this Petition, the Iowa Civil Rights Commission issued an Administrative Release with respect to Plaintiff's charges.

**FACTUAL BACKGROUND**

7. Mark Jorgensen has been a police officer since 1998.

8. The Urbandale Police Department hired Jorgensen as a police officer on March 1, 2004.

9. In 2000 Jorgensen was diagnosed with Crohn's Disease. To stay healthy, he must take an extremely expensive prescription medication.

10. Jorgensen also has Shift Work Sleep Disorder, making it extremely difficult for him to sleep during the daytime hours.

11. Ross McCarty became the Urbandale Chief of Police on approximately March 31, 2008.

12. In May 2009, Jorgensen had the choice of being able to work days or gain valuable experience as the Acting Watch Commander on the overnight shift. He talked to Chief McCarty about his health concerns related to working the overnight shift but ultimately decided to do so in order to improve his chances of earning a promotion.

13. Working the overnight shift and being unable to sleep during the day caused Jorgensen to re-experience issues with his Crohn's Disease, which had been in remission for nine years. Jorgensen was hospitalized several times and eventually had to have a portion of his bowel removed.

14. Despite being informed about the adverse effects working overnights had on Jorgensen's health, Defendant has periodically continued to assign him to work the overnight shift.

15. Jorgensen was promoted to Sergeant on approximately July 13, 2014.

16. In September 2016, Captain Matt Logsdon was Sergeant Jorgensen's direct supervisor.

17. On September 20, 2016, Captain Logsdon completed an Employee Development Analysis on Sergeant Jorgensen for purposes of succession planning within the Department. He claimed not to know what direction Jorgensen wanted his career to go and claimed Jorgensen told

Chief McCarty that he was considering taking a demotion because “his schedule was not to his liking.”

18. Sergeant Jorgensen had never spoken with Chief McCarty about a demotion.

19. Sergeant Jorgensen told Captain Logsdon that and explained that his reluctance to work nights was not based on personal preference, but rather, concern about his serious medical conditions.

20. Sergeant Jorgensen requested to be moved to the day shift because of his struggles to sleep.

21. Instead, Defendant assigned Sergeant Jorgensen to work nights again beginning October 1, 2016.

22. Chief McCarty assigned a sergeant with less seniority than Sergeant Jorgensen to the day shift.

23. Once again, Sergeant Jorgensen had significant difficulty adjusting to the hours, as it was almost impossible for him to sleep during the day.

24. On October 14, 2016, Chief McCarty sent an email to the entire Department that appeared to blame Sergeant Jorgensen and one other employee for an increase in employee health insurance premiums. McCarty pointed out that the City was self-insured and said, “We do have some employees with special health issues that require a prescription outlay of \$106,000 per year.” Although McCarty did not use Jorgensen’s name, it was common knowledge that he was on expensive medication for his Crohn’s disease.

25. On November 2, 2016, Jorgensen was the Sergeant in charge of the overnight shift.

26. In the early morning hours, the Department received reports of gunshots at 70th Street and Aurora Avenue in Urbandale.

27. Shortly thereafter, Justin Martin, one of the officers on duty, did not respond to his radio.

28. Sergeant Jorgensen and Officer Bryce Boehm were the first to arrive on scene and came upon Officer Martin's patrol car riddled with bullets.

29. They discovered Officer Martin slumped over in his patrol car with multiple gunshot wounds to the head, arms, and body. It was immediately apparent he was dead.

30. Sergeant Jorgensen rushed to call dispatch and requested backup and investigators to the scene. The Urbandale Fire Department also arrived.

31. Sergeant Jorgensen notified his direct supervisor, Captain Matt Logsdon, that Officer Martin had been murdered in an ambush.

32. Officer Martin was only 24 years old and had been assigned to Sergeant Jorgensen's command just a few weeks earlier.

33. Sergeant Jorgensen was attempting to secure the scene when a call came over the radio that Des Moines Police Sergeant Anthony Beminio had been murdered in an ambush-style attack at Merle Hay Road and Sheridan Avenue.

34. Every squad car except one left to rush to the nearby scene of Sergeant Beminio's murder.

35. Sergeant Jorgensen told the Urbandale firefighters that he lacked the manpower to protect them, but they stayed to assist anyway.

36. Sergeant Jorgensen again called Captain Logsdon and requested that the Suburban Emergency Response Team ("SERT") be sent to help him and the three remaining police officers at 70th and Aurora.

37. SERT was notified and standing by, but Chief McCarty declined to deploy them, leaving Sergeant Jorgensen and three other officers as the only police presence at 70th and Aurora.

38. For the next several hours, Sergeant Jorgensen and his men worked the crime scene in the dark while the killer remained unknown and at large.

39. Sergeant Jorgensen finally went home around noon. By then, he had been awake for approximately 40 hours.

40. When Sergeant Jorgensen arrived at work on November 3, Officer George Griffith asked how he was doing.

41. Sergeant Jorgensen responded that he did not know if he should be at work given his mental state.

42. Sergeant Jorgensen also commented that he thought it was odd that none of the command staff had checked on him or his men to see how they were coping.

43. When Captain Logsdon heard that Sergeant Jorgensen was struggling, he summoned Jorgensen to his office and angrily chewed him out.

44. Captain Logsdon told Sergeant Jorgensen that he had checked on him by sending a text message.

45. Captain Logsdon then accused Sergeant Jorgensen of not being a team player and said Jorgensen's comment to Officer Griffith was inappropriately critical of management.

46. After Officer Martin's murder, Sergeant Jorgensen's sleeping difficulties worsened. He became plagued with severe nightmares and images of the murder scene that he could not erase from his mind.

47. Sergeant Jorgensen was scheduled to work every other day and he was awake more than 24 hours straight each day he worked.

48. Sergeant Jorgensen also struggled with intense guilt related to Officer Martin's death.

49. Within 10 days of a shooting, a confidential debriefing is supposed to be held with the officers involved. To facilitate open and honest feedback, nothing said in the debriefing is supposed to be released to command staff.

50. This debriefing never happened.

51. Instead, Chief McCarty held a meeting with employees from multiple departments.

52. Chief McCarty started the meeting by complaining about how he was notified of the shooting, an implicit dig at Sergeant Jorgensen.

53. At the end of the meeting, Defendant failed to provide any resources to officers who were having difficulty coping with the shootings.

54. Rather than provide any personal support to Sergeant Jorgensen, Chief McCarty bad-mouthed him throughout the Department.

55. Chief McCarty held meetings with individual officers in which he degraded Sergeant Jorgensen and his abilities. McCarty tried to get officers to accuse Jorgensen of making mistakes the night of the murders, and he ignored the officers when they insisted that Jorgensen had done nothing wrong.

56. On Monday, November 7, Sergeant Jorgensen was supposed to go to Rockwell City as part of the Honor Guard for Officer Martin's visitation.

57. As Officer Martin's commanding officer, it was extremely important to Sergeant Jorgensen that he attend.

58. Chief McCarty refused to allow Sergeant Jorgensen to be part of the Honor Guard.

59. On November 16, Sergeant Jorgensen was called into a meeting with Chief McCarty.

60. Chief McCarty asked Sergeant Jorgensen how he was doing, and Sergeant Jorgensen replied, "not good."

61. Chief McCarty responded, "Well, this is going to be a tough meeting for you."

62. The Chief started by recommending that Sergeant Jorgensen take a disability retirement for his Crohn's disease.

63. Sergeant Jorgensen said he had no intention of doing that and that he had not missed work due to Crohn's for over two years.

64. Chief McCarty then encouraged Sergeant Jorgensen to demote himself.

65. Sergeant Jorgensen responded that he had worked very hard to rise through the ranks and had no intention of accepting a demotion.

66. Chief McCarty continued to threaten to demote Sergeant Jorgensen.

67. Chief McCarty berated Sergeant Jorgensen because on the day of the shooting Jorgensen had expressed regret that he had not yet had the opportunity to really get to know Officer Martin because they had worked together such a short time.

68. Chief McCarty seemed to believe the comment showed that Sergeant Jorgensen had not cared enough about Officer Martin to get to know him.

69. Chief McCarty told Sergeant Jorgensen that if his comment was recorded on one of the officers' bodycam videos, Jorgensen was going to have to go to Officer Martin's family and the media and explain himself.

70. Chief McCarty then asked Sergeant Jorgensen if Jorgensen was going to review all the bodycam footage or if Jorgensen was going to make one of the Captains do it.

71. Realizing he had no choice, Sergeant Jorgensen agreed to do it.

72. Chief McCarty told Sergeant Jorgensen to send him an email saying simply "yes" or "no" to indicate whether Jorgensen's statement was on tape.

73. Sergeant Jorgensen sat alone in his office and watched all the bodycam footage showing the aftermath of Officer Martin's murder, forcing him to relive every awful moment.

74. This experience re-traumatized Sergeant Jorgensen.

75. Afterward, Jorgensen sent Chief McCarty an email stating the word “no.”

76. In December 2016, Sergeant Jorgensen talked with command staff about an officer who was struggling with the aftermath of the shootings and feeling disengaged.

77. Chief McCarty’s response reflected his disdain and disrespect toward officers who struggled with mental health issues related to Officer Martin’s murder: “If I had a subordinate tell me that the job is just a paycheck, I would tell them that as the Sergeant, I have expectations of what it will take to earn that check. And making arrests and enforcing laws are a primary responsibility to maintain the good wages received. Otherwise, if security work is what you want to do, Conley Security is hiring.”

78. On December 15, 2016, Sergeant Jorgensen and another officer went to Rockwell City on their day off to have lunch with Officer Martin’s parents. Chief McCarty had previously authorized the use of Departmental vehicles for this purpose.

79. They were already on their way when they received an email from Chief McCarty, stating that such trips would need preapproval.

80. A few hours later, they received a sarcastic email from Captain Logsdon stating, “Thanks for not letting me know you both were going up there and taking a marked vehicle. Went over well.”

81. On December 30, 2016, Sergeant Jorgensen forwarded an email about some free training opportunities to the rest of the Department. This was a common practice that had never before been questioned or resulted in a hostile response.

82. Chief McCarty responded to the entire Department, berating Sergeant Jorgensen for forwarding the email and accusing Jorgensen of doing so in order to try to “make the command [staff] look as though we are indifferent to training needs.”



83. When Sergeant Jorgensen tried to clarify his intention, Chief McCarty threatened him with “disciplinary action for any future breach of a similar nature.”

84. Sergeant Jorgensen developed Post Traumatic Stress Disorder and Anxiety Disorder from Officer Martin’s murder and Defendant’s subsequent abusive treatment of Jorgensen.

85. In January 2017, Sergeant Jorgensen reached the point at which he could no longer handle the anxiety from his PTSD and Chief McCarty’s continual public shaming. Jorgensen reached out for assistance and received permission to work light duty for two weeks.

86. In May 2017, Sergeant Jorgensen was sent along with some other officers to Police Week in Washington, D.C.

87. Police Week is an event sponsored by Concerns of Police Survivors, Inc. (“COPS”) to provide resources for the surviving family and coworkers of peace officers who have died in the line of duty.

88. One of the speakers at Police Week brought up depression. Chief McCarty responded by saying, “I’ll tell you how to deal with depression. You get up, put your pants on, and get to work.”

89. On May 17, 2017, Sergeant Jorgensen wrote Chief McCarty a thank you note for allowing him and others to attend Police Week. He said he learned that he was not alone and a lot of people who worked directly with Officer Martin were still struggling with their emotions.

90. In response, Chief McCarty blasted Sergeant Jorgensen, insisting that either Jorgensen’s officers must not trust Jorgensen or else Jorgensen was intentionally disregarding his officers’ needs by not informing command staff about their emotional issues.

91. Chief McCarty also criticized Sergeant Jorgensen for a litany of issues, including not being sufficiently loyal to management and for trying to help an officer who had submitted his resignation due to the officer’s PTSD.

92. Chief McCarty also threatened Sergeant Jorgensen that they would have to meet with Captain Rob Johansen and Human Resources Director Karla Lower to have a discussion and determine “how we will move forward.”

93. At that meeting, Chief McCarty assigned Sergeant Jorgensen to meet with Captain Johansen on a monthly basis regarding the health and welfare of employees. Even though Jorgensen was a roving sergeant without any particular group of officers assigned to him, he was tasked with the responsibility of finding out if anyone was having any problems—inside or outside of work—and to report on those issues.

94. During the same meeting, with no apparent self-awareness about the contradictory messages he was sending, Chief McCarty again chastised Sergeant Jorgensen for trying to help the officer with PTSD who had recently resigned.

95. On August 9, 2017, Sergeant Jorgensen complained in writing about disability discrimination, failure to accommodate, harassment, and retaliation to the City’s Human Resources Department.

96. On August 11, Sergeant Jorgensen met with HR Director Karla Lower about his complaint.

97. Lower told Sergeant Jorgensen she found “the timing of all this to be suspicious and funny.”

98. Lower minimized everything Sergeant Jorgensen had experienced and warned him it was very difficult to prove harassment. She stated, “You realize that when push comes to shove, none of these people are going to back you up.”

99. Lower later emailed Sergeant Jorgensen and said he needed to tell her whether or not she should investigate his complaint. Reasonably believing that Lower had already made up her mind and would never treat him fairly, Jorgensen did not respond.

100. Nevertheless, City and Police Department policies require that every complaint of discrimination, harassment, or retaliation must be investigated.

101. Defendant failed to investigate Sergeant Jorgensen's complaint.

102. Exercise is one of the few things that helps Sergeant Jorgensen manage symptoms of his PTSD and anxiety disorder.

103. In June 2018, Sergeant Jorgensen requested the reasonable accommodation of being able to use his lunch break to exercise.

104. Defendant refused the request.

105. Ross McCarty was an employee and agent of Defendant City of Urbandale, acting at all material times within the scope of his employment and agency.

106. Matt Logsdon was an employee and agent of Defendant City of Urbandale, acting at all material times within the scope of his employment and agency.

107. Karla Lower was an employee and agent of Defendant City of Urbandale, acting at all material times within the scope of her employment and agency.

**COUNT I  
VIOLATIONS OF THE IOWA CIVIL RIGHTS ACT  
DISABILITY DISCRIMINATION, HARASSMENT,  
FAILURE TO ACCOMMODATE, AND RETALIATION**

108. Plaintiff repleads paragraphs 1 through 107 as if fully set forth herein.

109. Plaintiff's Crohn's disease substantially interfered with his major life activities of eating, sleeping, digestion, and waste elimination.

110. Plaintiff's Crohn's disease also substantially interfered with his digestive and bowel systems.

111. Plaintiff's Shift Work Sleep Disorder substantially interfered with his major life activity of sleeping.

112. Plaintiff's PTSD and Anxiety Disorder substantially interfered with his major life activities of sleeping, concentrating, and thinking.

113. Plaintiff's PTSD and Anxiety Disorder also substantially interfered with his brain and neurological systems.

114. Plaintiff was disabled within the meaning of the Iowa Civil Rights Act.

115. In the alternative, Defendant regarded Plaintiff as disabled.

116. Plaintiff was able to perform the essential functions of his job with or without reasonable accommodations.

117. Defendant discriminated against Plaintiff with respect to his employment in violation of the Iowa Civil Rights Act.

118. Plaintiff's disabilities were a motivating factor in Defendant's discrimination against him.

119. Plaintiff requested reasonable accommodations for his disabilities.

120. Defendant failed to accommodate Plaintiff's disabilities in violation of the Iowa Civil Rights Act.

121. Defendant failed to engage in good faith in an interactive process with Plaintiff to assist in accommodating his disabilities in violation of the Iowa Civil Rights Act.

122. Defendant retaliated against Plaintiff.

123. Plaintiff's protected activity was a motivating factor in Defendant's retaliation against him.

124. As result of Defendant's illegal acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages including, but not limited to, mental and emotional distress, fear, anguish, humiliation, betrayal, stress, lost enjoyment of life, lost wages, medical expenses, and employment benefits.

WHEREFORE, Plaintiff demands judgment against Defendant in an amount which will fully and fairly compensate him for his injuries and damages, for prejudgment and postjudgment interest, for attorney fees, for the costs and expenses of this action, for equitable relief, and for such other relief as may be just in the circumstances and consistent with the purpose of the Iowa Civil Rights Act.

**JURY DEMAND**

COMES NOW the Plaintiff and hereby requests a trial by jury.

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